

**Minutes of Public Access Task Force
Committee on Access to Court Records
July 6, 2006**

The Committee on Access to Court Records met in the Supreme Court Attorney's Conference Room at 231 Capitol Avenue in Hartford on Thursday, July 6, 2006.

Those in attendance: Judge Alander, Dr. Cibes, Judge Clifford, Ms. Collins, Ms. Griffin, Judge Lavine, and Judge Ment. The meeting was called to order by Judge Alander at 2:05 PM.

The minutes were approved as distributed and will be posted on the Task Force website.

The next item on the agenda was the continuation of the discussion of the types of court records that should be categorically excluded from public access. (A list of Records Not Available to the Public Pursuant to Federal and/or State Law is attached to these minutes.) The committee began its discussion with records erased pursuant to statute. The question was whether there should be any changes recommended with respect to erased records. Ms. Collins suggested that access to an application to a program should be public for several days after it is filed along with dismissals remaining public for several days after the satisfactory completion of a program as opposed to the current statutes that deem a matter erased upon the successful completion of the program. Judge Ment pointed out that the handling of these programs is based upon statutes rather than court rules so that the committee could only recommend that the legislature change the statute. Judge Clifford talked about the current statute regarding youthful offenders which presumes youthful offender status so that these types of cases come in sealed. Other programs are different, i.e., Alcohol Education Program (AEP) which is ordered sealed upon application. An extensive discussion ensued as to the handling of the different programs and the risk in an electronic world of an employer, for example, finding a record of an arrest, but no record of a disposition. Concern was expressed regarding the inability of a third party to access records of dispositions upon successful completion of these programs. After an extensive discussion, Judge Lavine suggested the following language:

All files and proceedings relating to all pretrial diversion programs currently sealed upon application or sealed upon granting shall remain open to the public and available for three days after such sealing. Thereafter the file shall be sealed by operation of law. The parties may move to seal portions of the file relating to statutorily protected medical or psychiatric information within the three days. A record of the successful dismissal of the case and of the charge dismissed shall remain open and accessible to the public.

The committee reached a consensus on this general language regarding pretrial diversion programs. There was also discussion of the handling of records in connection with accelerated rehabilitation. The sense of the committee was that the dismissal and the charge that was dismissed following successful application for accelerated rehabilitation should also be publicly available. The recommendation will be submitted to Legal Services for their review. There is no consensus with respect to cases that are nolle.

Jack Brooks, the Director of Administration in the Court Support Services Division and Bob Wannagot, Chief Probation Officer in New Haven, addressed the committee regarding the contents of and current access rules for presentence investigation reports prepared by Probation officers (PSI's). He provided a summary of the information that is contained in the reports and pointed out that much of the information is protected from public disclosure by current state and federal statutes and practice book rules. Items included medical and psychological records of the defendant and of the victim, substance abuse treatment records, federal and state tax information, military history, juvenile records, education and special education information about the defendant, names of minor children, family history, and victim's history and impact statement. According to both Mr. Brooks and Mr. Wannagot, if the victims and the defendants were told that this document would be accessible to the public, it would result in the creation of a dramatically different document that would be considerably less useful to the sentencing judge. In addition, that document would be of little use to other departments who deal with the defendant, and rely heavily on the information contained in the report.. Those departments include: adult probation, the correctional or mental health institution to which the defendant is or may be committed, the sentence review division, the board of parole, and the board of pardons. According to Mr. Wannagot, individuals interviewed are aware that the report is provided to certain people only, and that it will be used in a sentencing proceeding. There is some question as to whether the individuals being interviewed realize that the information could be disclosed in open court at that sentencing hearing. Judge Clifford pointed out that there is a huge difference between knowing it is a confidential document and knowing that the information could be publicly disseminated. Items, including the defendant's version of the offense and the victim's impact statement, would be impacted by public disclosure. Both Mr. Brooks and Mr. Wannagot expressed strong concerns that opening these reports to the public would chill the willingness of people to provide information. Mr. Wannagot did agree that there would be little chilling impact on the information obtained for certain portions of the PSI, including information on the defendant's criminal history generally, the demographic information, certain basic information regarding the defendant's identity (i.e. social security number and birth date) and the statement from the state's attorney regarding the offense itself, but not all that information can be publicly released under current statutes. Ms. Collins inquired as to why such information could not be redacted. One of the problems is the relatively short time that such reports are available to the parties prior to sentencing. Another problem with redaction is that much of the information that a judge sees may or may not be publicly available, which means that the information that remains in the report would not be in context. This last point could create a false impression of the information relied upon by the judge, which runs counter to many of the reasons for making records open to the public.

The committee then heard from Ms. Linda Cimino, Director of the Office of Victim Services for the Judicial Branch. She agreed that the victim's impact statement contained in the presentence investigation report should remain confidential, although she indicated that allowing the victim the option of making the statement public would be more "respectful" of the victims. She said that there are reasons that the documents should remain confidential since some victims would not want such information exposed to public view. In response to Ms. Collins asking if there were any benefit to the public in making a presentence investigation report public, Ms. Cimino responded that it would

depend on the underlying crime because there are situations where the damage to a family could be compounded, i.e., sexual assault cases.

The committee then took a five minute break and reconvened at 4:00 PM.

Judge Alander provided committee members with copies of comments that he has received from judges in response to the broadcast e-mail that was sent out last week. Ms. Griffin and Ms. Collins would like to reach out to the press and the public as well. Public comment is solicited through the web site and ultimately will be received at a public hearing; however, the committee agreed to seek comments from the media through the Judicial Branch list serve for the media. Ms. Collins and Ms. Griffin will draft an e-mail for distribution through the list serve.

The next item discussed was the posting of criminal docket information on the Internet. A discussion ensued as to the information that is contained on the docket sheets that are posted at the courthouses and the impact of posting this information on the Internet. In terms of the arraignment dockets, the need to redact names can arise as a result of what happens in the court that day, i.e., a person applying for the alcohol education program or similar pretrial diversionary program. There was further discussion as to what the statute actually requires to be sealed. Judge Alander read the statutory language and indicated that it seems to require the sealing of the contents of the file, but not the existence of the file. The arraignment dockets currently contain the following information: docket number, name, date of birth, number of times the case has appeared on the docket, arrest town code, and arrest date.

Judge Ment suggested that all other criminal daily docket sheets, i.e., the trial docket, the pretrial docket, disposition docket, motor vehicle or gun docket, should be posted on the Internet. He further suggested that the information be broken down by courts, and be available in the morning and until the next docket goes up the following day. Every business day, there will be a replacement of that information with new information. After an extensive discussion, Judge Ment moved that the committee recommend that all criminal dockets, including the charges where they are available on paper, be placed on the Internet when they are available until the information is updated. Information would be broken down by courts, and would also be searchable by names on the daily docket. Judge Lavine seconded the motion, and the vote was unanimous in favor of making the recommendation.

The next item that was discussed was an e-mail that Judge Alander and Ms. Collins had received from Attorney Aaron Bayer regarding an inquiry he had received about the appellate court. One question had to do with the process of determining who heard cases. The consensus of the committee was that this question was not within the jurisdiction of the court records committee. The other was an inquiry about the posting of the docket of the Appellate and Supreme Courts. According to Michèle T. Angers, chief clerk of the Supreme and Appellate Courts, what is posted now are the assignment for days for the Supreme and Appellate Courts. They are currently in the process of developing a case detail program, similar to that which is currently available for the trial courts, which would allow a practitioner to access the list of motions that have been filed at the appellate level in a case. The process will be developed and released in phases.

The next item was a discussion of criminal conviction information, which is currently sold to credit bureaus and employment agencies. After discussion, Judge Ment recommended that this information also be made available on the Internet so that individuals would be able to look up discloseable conviction information by name and date of birth, or docket number.

Dr. Cibes questioned the posting of information when a person is not convicted. According to Attorney D'Alesio, the information is treated as a dismissal and is not disclosed, pursuant to C.G.S. §54-142. Judge Ment pointed out that this means of handling the information would be inconsistent with the recommendation (and the reasons behind the recommendation) the committee is making on pretrial diversion programs. He suggested that the committee might want to recommend a change on the dismissal or not guilty information as well. The committee will discuss this issue at the next meeting.

Attorney D'Alesio raised the question of posting pending criminal case information. Judge Alander requested that someone from Court Operations attend the next meeting of the committee to discuss the issues with updating and posting of information in pending cases.

The committee then returned to its discussion of records that might be categorically excluded from public access. The next record on the list was a Request for nondisclosure of location information under C.G.S. §46b-115s. These requests would involve location information in a child custody proceeding and the court order would be based on concern for the "health, safety or liberty" of a person. The committee's consensus was that no change was needed. With respect to a similar request for an order on nondisclosure of location or identifying information pursuant to C.G.S. §46b-212x under the Uniform Reciprocal Enforcement of Support Act, the consensus was that no change was needed. Regarding access to records by Judicial Branch employees, contractors, or authorized agents under C.G.S. §51-36a, providing access to erased records by such employees, the consensus was no change was necessary.

The next item was the juror questionnaire. Currently, this questionnaire is not open to public access although it is used during jury selection and the information in it may be discussed during that process. A discussion ensued as to what jurors are told regarding the information that they provide in the questionnaire and what actually is public. Judge Clifford said that currently, the only information on jurors that is public is their name and town. The discussion then turned to what other information should be made public. Various concerns were raised regarding the need for the public to know that an individual is being judged by a jury of his or her peers, the need for obtaining information regarding the make-up of juries for purposes of studies, the concerns of jurors regarding retaliation by a defendant in a criminal case, and the possible chilling effect on jurors in filling out these questionnaires if they are told they will be made public. Ms. Collins also mentioned the more extensive juror questionnaires that can exist in a death penalty case, for example. There was no consensus on this issue.

Judge Alander then said that the committee will have a meeting on Tuesday, July 11th, at 2:00 PM. The committee decided to address the issues for which there has been no consensus on Monday, July 17th. The committee will also meet on Thursday, July 20th. The meeting adjourned at 5:00 PM.

Records Not Available to the Public
Pursuant to Federal and/or State Law

Note: The below list is the result of an online search of the Practice Book and Titles 1, 46b, 51, 52, 53, 53a and 54 using the following search terms: "private or confidential or seal or erase or close or disclose or open."

The following are categories of information to which public access is restricted:

Health and Medical Information- P.B. §§7-18, 15-4, 25-55; HIPAA

Investigations and proceedings of Grievance Panels, P.B. §2-32; C.G.S. §51-90f

Records and transcripts of State Bar Examining and Standing Committees, P.B. §2-50

Records of Grievance Proceeding, dismissals, P.B. §2-50

Inactive status petitions, at the discretion of the court, P.B. §2-56

Claims submitted to the Client Security Fund Committee, P.B. §2-76

Client Security Fund- crisis intervention and referral assistance records, P.B. §2-76;
C.G.S. §51-81d (f)

Records maintained in Juvenile Matters, P.B. §30a-8, 32a-7, 32a-8, 35a-10, 79-3
(Appellate); C.G.S. §§46b-122, 46b-124, 46b-127, 46b-142 (Appellate)

Sealed files/documents, P.B. §§7-4A, 11-20A (Civil), 25-59A (Family), 42-49A (Criminal),
77-1 & 77-2 (Appellate); C.G.S. §46b-11 (Family), 51-164x (Appellate)

Lodged Records, P.B. §7-4C, 77-2 (Appellate)

Files/Records Stripped and Destroyed pursuant to Retention Schedule, P.B. §§7-10
through 7-16

Short Calendar Records, retained as determined by CCA, P.B. §7-20

Exhibits and other papers, may be destroyed 4 months after final determination, P.B. §7-
21

Protective Orders, P.B. §§13-5, 40-41, 40-43

Protective Order Registry, C.G.S. §51-5c

Statement of Amount in Demand, not disclosed to jury, P.B. §16-19

Motion for leave to withdraw appearance of appointed counsel, P.B. §23-41

Family Division Evaluations, Studies and Reports, P.B. §25-60; C.G.S. §46b-38c

Conciliator records, C.G.S. § 46b-53

Mediation program records, C.G.S. §46b-53a

Mediation, non-court ordered, C.G.S. §52-235d

Sealed affidavits in support of arrest warrant application, P.B. §36-2

Court ordered subpoenas, discovery (Criminal), P.B. §40-2

Objection to disclosure (Criminal), P.B. §40-8

Personal residence addresses of police or correction officer, P.B. §40-13

Witness addresses, sealed per court order, P.B. §40-13

Record of In Camera Proceeding (Criminal), P.B. §40-42

Return of Deposition (Criminal), P.B. §40-53

Extrajudicial statements (Criminal), P.B. §42-48

Presentence Investigation Reports & Assessments, P.B. §§43-7, 43-8, 43-9; C.G.S. §§54-91b, 54-142g (a)

Alternate Incarceration Assessment Reports, P.B. §§43-7, 43-8, 43-9

Erased records

- Completion of Pretrial Family Violence Education Program, C.G.S. §46b-38c
- Nolle prosequi in delinquency matters, C.G.S. §46b-133a
- Delinquency records, C.G.S. § 46b-146
- Youthful offender records, C.G.S. §54-76o
- Criminal records, C.G.S. §54-142a
- Girl in manifest danger, C.G.S. 54-142b
- Disclosure of erased records, C.G.S. §54-142c

Requests for nondisclosure of location information, C.G.S. §46b-115s

Nondisclosure of location/identifying information (Support), C.G.S. §46b-212x

Access to records by Judicial Branch employees, contractors, authorized agents, C.G.S. §51-36a

Juror questionnaire, C.G.S. §51-232

Privileged communications made to clergymen, C.G.S. §52-146b

Privileged communications between psychologist and patient, C.G.S. §52-146c

Privileged communications between psychiatrist and patient, C.G.S. §52-146d, 52-146e, 52-146f, 52-146i

Privileged communications between battered women's or sexual assault counselor and victim,
C.G.S. §52-146k

Disclosure of confidential communication by interpreter prohibited, C.G.S. §52-146l

Communication made by or to deaf or hearing impaired person with assistance of operator of special telecommunications equipment deemed privileged, C.G.S. §52-146m

Communication between Judicial employee and employee assistance program counselor prohibited, C.G.S. §52-146n

Privileged communications between physician, surgeon or health care provider and patient, C.G.S. §52-146o

Privileged communications between marital and family therapist and person consulting therapist, C.G.S. §52-146p

Confidential communications between social worker and person consulting social worker, C.G.S. §52-146q

Confidential communications between government attorney and public official or employee of public agency, C.G.S. §52-146r

Confidential communications between professional counselor and person consulting professional counselor, C.G.S. §52-146s

Deposition (Civil), C.G.S. §52-156

Arrest warrant affidavit, C.G.S. §54-33c

Wiretap records, C.G.S. §§54-41a, et seq.

Record of grand jury proceedings, C.G.S. §§54-45, et seq.

Accelerated pretrial rehabilitation, C.G.S. §54-56e

Pretrial alcohol education, C.G.S. §54-56g

Pretrial drug education, C.G.S. §54-56i

Alcohol or drug dependency report, C.G.S. §17a-694

Pretrial school violence prevention, C.G.S. §54-56j

CSSD files, with exceptions, C.G.S. §54-63d

Youthful offender, C.G.S. §§54-76c, 54-76f

Witness receiving or considered for receipt of protective service, identity and location, C.G.S. §54-82t

Sexual assault victim, name, address and identifying information, C.G.S. §54-86e

HIV information and testing C.G.S. §§54-102a, 54-102b, 54-102c

Nonconviction information, C.G.S. §§54-142k, 54-142m, 54-142n

OVS records, re: sexual assault/domestic violence victims, C.G.S. §§54-203(b)(7)(J)

Confidential information in OVS compensation and restitution files, C.G.S. §54-204

OVS victim requests for notification and victim mailing address, C.G.S. §§54-228; 54-230

Sex Offender Registry, name of victim, C.G.S. §54-258

Photographs and computerized images of individuals, C.G.S. §1-17a

Financial statement of judges' spouse and dependent children, C.G.S. §51-46